THE HONOURABLE SRI JUSTICE P.S. NARAYANA

W.P. NO. 27289 of 2005

DATED: -10-2007

Between:-

M/s. V.B.R. Builders and B.K. Builders, rep. by its Proprietor V.Babu Rao.

…Petitioner

and

The Government of A.P. Revenue (Endowments) Department, Secretariat, Hyderabad, represented by its Principal Secretary and 2 others.

…Respondents

THE HONOURABLE SRI JUSTICE P.S. NARAYANA

W.P. NO. 27289 of 2005

O R D E R

Heard the counsel on record.

2. The writ petition is filed for a writ of Mandamus or any other appropriate writ or direction declaring the action of respondents 1 and 2 in not granting permission to the 3rd respondent for entering into the agreement in terms of G.O. Rt. No. 942 dated 22.5.2002 with the petitioner as illegal, arbitrary and consequently direct the respondents to implement G.O.Rt. No. 942, dated 22.5.2002 and pass appropriate orders.

3. It is stated by the petitioner that the 3rd respondent-temple is the owner of the property admeasuring an extent of 405 sq. yards covered by D.Nos. 1912 and 1913, situated at Pan Bazar, Secunderabad, 176 sq. yards covered by H.No. 3-4-430/431 at General Bazar, Secunderabad, that as the building belonging to the temple became old and in a dilapidated condition and with a view to develop the sites to augment the income of the temple, a proposal has been sent to the Commissioner of Endowments Department i.e. 2nd respondent for according permission for development of the said property through the petitioner firm under 45:55 ratio and on receipt of the said proposal the Commissioner in turn had submitted the proposal to the Government and the Government after examining the matter has accorded permission vide G.O.Rt. No. 942, Revenue (Endowments-II)

Department dated 22.5.2002 for development of the above mentioned two sites imposing 17 conditions and permitting the temple and the builders to share the constructed area in each floor in the said proposed complex at 45:55 respectively, that after receipt of the said G.O., the 2nd respondent herein had issued a notice in Rc.NO. M4/22133/2001, dated 29-05-2002 inviting objections and suggestions from the interested persons within 30 days from the date of publication in the Gazette and pursuant to the said notification there were no objections and the respondents have proceeded further with regard to the proposal for the development of the land and that the 3rd respondent had issued a notice to the existing tenants in the building to vacate the premises.

4. It is further averred that questioning the said notice, the tenants have filed W.P. No. 10300/2002 and W.P. No. 8735/2003 before this Hon'ble Court and the said writ petitions have been disposed of by this Hon'ble Court on 12-4-2004 and 4-8-2003 and this Court was pleased to observe that in the event of the property being developed and the commercial complex being brought about, the petitioners i.e. existing tenants can certainly make an application for allotment of one such place, on such application being made at an appropriate stage the 3rd respondent shall consider the same on par with the other applicant and pass appropriate orders or take appropriate action as the case may be and that notwithstanding the orders of this Court, the tenants have refused to vacate the property and he had to pay compensation to four out of ten tenants to vacate the premises.

5. It is further averred by the petitioner that he made an application to the 3rd respondent requesting him to enter into an agreement with him in terms of the G.O.Ms.No. 942 dated 22.5.2002 for developing the property and on the application so made, the matter has been forwarded to the Commissioner and who in turn has written a letter to

the 1st respondent requesting him to accord permission to the Executive Officer to enter into a development agreement, that to the letter so written the 1st respondent had issued a Memo No. 37183/Endts.II(1)/2004 dated 25.7.2004 stating that any further action could be taken in view of the interim orders passed in W.P.M.P. No. 15055 of 2005 in W.P. No. 11812 of 2005 dated 7-06-2005 and that in pursuance of the said memo, the respondents are not taking any action on the ground that the interim orders have been passed in the above writ petition.

6. It is further averred that the above writ petition has been filed as a public interest litigation by one V. Prabhakaracharyulu and V.Giri Yadav seeking a relief of declaration of action of respondent in alienating and disposing of the properties and this Hon'ble Court was pleased to grant interim directions, that the above writ petition has nothing to do with the facts of the present case as admittedly the Government had issued G.O. much prior to 24-10-2002 and necessary procedure required under the provisions of Endowment Act has been followed and the order that has been issued by the Government has become final.

7. It is further averred that the action of the respondents is not legal and valid.

8. G.O.Ms. No. 942 dated 22-05-2002 as is hereunder:

Establishments – Twin Cities – Sri Lakshmi Narayana Swamy Temple, Secunderabad – Development of site measuring 405 sq. feet in House No. 1912 and 1913, situated at Pan Bazar, Secunderabad and House Non No. 430/431, situated at sanctioned for – Forwarded.

REVENUE (ENDTS.II) DEPARTMENT

G.O.Rt.No. 942, Dated: 22-05-2002

Read the following:-

1) From the Commissioner of Endowments Department, Lr. No. Mc/22133/2001 , dated 15.07.2001,

2) Govt. Memo No. 42514/Enors.II(I)/2001-1 dt. 23-05-2001.
3) From the Commissioner of Endowments Department, Lr. No. M4/22133/2001, dt. 5-11-2001.

ORDER

In the circumstances stated by the Commissioner of Endowments Department in his letter 1st and 3rd read above, the department after careful examination of the proposal hereby submit permission for the development of the property admeasuring 405 sq. yards of site in house Nos. 1912 and 1913 situated at Pan Bazar, Secunderabad and similarly 176 sq. yards of site in House No. 3-4-430/431, situated at General Bazar, Secunderabad and owned by Sri Lakshmi Narayana Swamy Temple, Secunderabad through M/s. V.B.R. Buildings and B.K. Builders Secunderabad with the following conditions subject to the fulfillment of the formalities u/s 80(1)(b) of the Act 80/87.

1) The parties to the FIRST AND OTHER PART shall be entitled to the constructed area in the ratio of 45:55. The owner shall share 45% and the developer shall share 55% in the built up area.
2) The parties shall be entitled to the land in the same proportion of 45:55 respectively out of the total area 405 sq. yards and 176 sq. yards.
3) The party of the first part shall be entitled for the share of 45% of the built up area and also in the parking area and the party of the OTHER PART shall construct the commercial complex in and over the subject property and hand over the same to the management.
4) The party of the second part has to pay a sum of Rs. 5.00 lakhs for the site of 405 sq. yards and Rs. 1.00 lakh for the site of 176 sq. yards by M/s. B.K. Builders and M/s. V.R. Builders respectively to the temple towards caution deposit for the performance of the contract. The amount so paid to the party shall be returned to the builders at the time of handing over the built up area, without any interest.
5) The built up area shall also include the common area, passage, staircase, balconies, ducts etc.
6) That the builders have responsibility to see that sitting tenants are evicted by the peaceful means before construction so started.
7) That they will complete the work within the stipulated period of 12 months from the date of permission for development from Endowments Department and Municipal Corporation of Hyderabad.
8) That in the event of not completing and handing over 45% share of constructed, building within 12 months from the date of handing over possession or in time the extended time with relevant permission, they will pay Rs. 10,000/- per month as rental compensation for the delay thereafter.
9) That they will construct and develop the property according to

standard specifications maintaining quality of the construction under close supervision of engineering staff of Endowments Department.

10) The developer shall construct and complete the commercial complex with all amenities like electricity and water etc. in the schedule mentioned property within a period of 12 months from the date of sanctioned plan issued by the Municipal Corporation of Hyderabad.
11) The developer shall obtain requisite permission for construction of the complex at its cost, but the same shall be in the name of the owner, for the said purpose, the owner shall sign all relevant papers and documents without any protest of reservation.
12) In case of breach of any of the terms by either parties, the other party shall be entitled to cancel the contract and sue for appropriate relief.
13) The builder alone shall be responsible to defend at his cost and expenses for any dispute or litigation that may be brought by the third parties in respect the schedule property and arrange for smooth completion of the project.
14) The developers shall be responsible to make compensation or expenses to any workmen or other persons in their employment upon the said work which may arise during the construction work which may rise during the construction period in execution of work of the whole complex.
15) If the developers raise any money from the intending purchasers and fail to complete the project then for the amount so received by them the temple shall not be held responsible for the said claims.
16) The constructed area is each floor in the said proposed complex shall be shared in the ratio of 45:55 among the temple and developer mutually and in a fair and reasonable manner.
17) The temple and developer shall be entitled to have tarred rights in the ratio 45:55 and in case of any additional construction on terrace both will share in the same ratio.

2) The commissioner of Endowments Department, Hyderabad shall take necessary action in the matter.

(BY ORDER AND IN THE NAME OF THE GOVERNOR OF ANDHRA PRADESH)

C.ARJUN RAO,
SPL. CHIEF SECRETARY TO GOVERNMENT."

9. The order made by the Division Bench in W.P.M.P.No. 15055 of 2005 in W.P.No. 11812 of 2006, dated 07-06-2005, had been placed before this Court and the order reads as is hereunder.

> "In the meantime, it is directed that no sales of Endowment lands shall be effected without the permission of this Court till further orders. No compromises shall be effected under Section 89 till further orders from this Court with respect to Endowment lands.
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> Pendency of this writ petition shall not be an impediment in any way for the State to proceed against the persons who may be involved in any offences relating to sale/compromise of the temple lands under any provision of the Endowments Act. They shall always be at liberty to revise the orders passed earlier, if warranted by law."

10. In the counter-affidavit filed on behalf of the 2nd respondent, it is stated by the Deputy Commissioner concerned that Sri Laxminarayana Swamy Temple, Somasundaram Street, Secunderabad owns the property measuring 405 sq. yards covered by H.No. 4-6-20/26, 4-6-71, Old Nos. 1912, 1913 situated at Pan Bazar, Secunderabad and 176 sq. yards covered by Municipal No. 3-4-430/431 at General Bazar, Secunderabad, that on the proposal of the petitioner, with a view to develop the said properties for generation of income to the temple, a proposal was submitted to the Government for according permission for the development of the said property through the petitioner and accordingly the Government, after examining the said proposal, have accorded permission vide G.O.Rt. No. 942, dated 22-5-2000 imposing certain conditions for development of the above said properties through the petitioner under 45:55 ratio, that after issue of the said G.O., the Commissioner with view to fulfill the formalities under proviso Section 80(1)(6) of the Act, 30/87 issued a notification in Rc.No.M4/22133/2001, dated 29-5-2002 inviting objections and suggestions from the interested persons within 30 days from the date of publication in the A.P. Gazettee and in response to the said notice, the tenants of the said temple property have submitted objection petition dated 25.6.2002 before the Commissioner of Endowments stating that they are prepared for an outright purchase of the temple land at the prevailing market value and that as the matter stood thus,

the Executive Officer had issued termination notices dated 27.5.2002 requesting the tenants residing at Pan Bazar and General Bazar to vacate the premises and to hand over the vacant possession of the property to the temple authorities.

11. It is further averred that questioning the said termination notice, the tenants residing in the premises bearing Nos. 1912 and 1913 at Pan Bazar, Secunderabad, have filed a writ petition No. 10300/2002 before this Court and got interim orders in W.P.M.P.No.12667/2002 dated 12-06-2002 directing the respondents not to evict them, pending disposal of the W.P., that the writ petition was finally disposed of on 12-4-2004 with a direction to the petitioner/tenants to make an application for allotment on such place in the developed commercial complexes, on such application being made at an appropriate stage, the Commissioner shall consider the same on par with the other applications for allotment and pass appropriate orders or action and that as per the Condition No.6 of the said G.O.Rt.No.942, it is clearly mentioned that the builder has responsibility to see that the sitting tenants are evicted by peaceful means before construction is started and that the builder took initiation for evicting the tenants and got evicted the four tenants and the remaining 6 tenants are yet to be evicted and further out of that 17 conditions imposed in the Government order dated 22-5-2002 no where it is mentioned that the tenants are to be evicted by paying compensation.

12. It is further alleged that the petitioners have made unnecessary delay for getting evicted the sitting 6 tenants and made the issue complicated, that they have submitted a representation requesting for entering into the agreement for starting constructions, when the matter referred to the Government, the Government vide its Memo No. 37183/Endts.II/2004 dated 22.7.2005 have informed that whether any further action can be taken on the proposal of the Commissioner of

Endowments letter dated 17.5.2005, and that keeping in view of the Hon'ble High Court's order dated 07-06-2005 in W.P.M.P.No.15055 of 2005 in W.P.No.11812 of 2005 wherein this Court directed that no sales of endowment lands shall be effected without permission of this Court till further orders and also no compromise shall be effected under Section 89 till further orders which may effect to the Endowment lands.

13. It is further stated that notwithstanding that the Government had issued a G.O.Rt.No.942 as early as on 24-10-2002 for development of Devasthanam site in question, the builders have failed to fulfill the conditions laid down till date, as such the petitioner is not eligible for any relief and consequent on filing public interest litigation petition by Sri V.Prabhakara Charyulu and others, this Court issued an interim order in the said W.P.M.P.No. 1505/2005 as stated above.

14. It is further stated that no compromise shall be affected under Section 89 till further orders from the Court with respect to the endowment lands

15. It is further stated that as such any transactions with regard to the land in question amounts violation of interim orders in force and it attracts contempt proceedings. There are no merits in the writ petition and the same is liable to be dismissed.

16. Certain submissions were made on behalf of the petitioner that the interim order on which strong reliance was placed would not be applicable to the facts of the present case in view of the peculiarity of the present case. As can be seen from the respective stands taken by the parties and also in the light of the contents of the G.O. impugned before this Court, this Court is of the considered opinion that in the light of the specific stand taken in the affidavit and also in the light of the fact that the public interest litigation in this regard is pending and interim order had been made, at present, no relief can be granted in favour of the petitioner. However, in the light of the stand taken by the petitioner,

liberty is given to the petitioner to approach the Court at appropriate time, in the event of any suitable or favourable orders being passed in W.P. No. 11812 of 2005. Except granting this liberty, nothing else can be done at this stage and, accordingly, with the above observations, the writ petition is hereby closed for the present. No costs.

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P.S. NARAYANA, J

Dated: -10-2007
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